

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 178

HOUSE BILL 2093

AN ACT

AMENDING SECTIONS 23-730 AND 23-731, ARIZONA REVISED STATUTES; AMENDING TITLE 23, CHAPTER 4, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-733.01; RELATING TO EMPLOYMENT SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 23-730, Arizona Revised Statutes, is amended to read:

23-730. Variation and adjustment of contribution rates

For calendar year 1985 and each calendar year thereafter, variations from the standard rate of contribution shall be determined in accordance with the following requirements:

1. If the total of all an employer's contributions, paid on or before July 31 of the preceding calendar year with respect to wages paid by the employer prior to July 1 of the preceding calendar year, equals or exceeds the total benefits that were chargeable to the employer's account and were paid prior to July 1 of the preceding calendar year, with respect to weeks of unemployment beginning prior to July 1, the employer's contribution rate for the ensuing calendar year subject to the adjustments provided by this section shall be determined from the employer's positive reserve ratio in accordance with the table provided in this paragraph. An employer's positive reserve ratio is the percentage resulting from dividing the employer's reserve surplus, which is the excess of contributions paid over benefits charged by the employer's average annual taxable payroll. If an employer's reserve equals zero, the employer's contribution rate for the ensuing calendar year shall be two and seven-tenths per cent, subject to the adjustments provided by this section.

<u>Positive Reserve Ratio</u>	<u>Contribution Rate</u>
Less than 3%	2.60%
At least 3% but less than 4%	2.40%
At least 4% but less than 5%	2.15%
At least 5% but less than 6%	1.90%
At least 6% but less than 7%	1.65%
At least 7% but less than 8%	1.40%
At least 8% but less than 9%	1.15%
At least 9% but less than 10%	0.90%
At least 10% but less than 11%	0.65%
At least 11% but less than 12%	0.40%
At least 12% but less than 13%	0.15%
13% or more	0.02%

2. If the total of all an employer's contributions, paid on or before July 31 of the preceding calendar year with respect to wages paid by the employer prior to July 1 of the preceding calendar year, is less than the total benefits that were chargeable to the employer's account and were paid prior to July 1 of the preceding calendar year, with respect to weeks of unemployment beginning prior to July 1, the employer's contribution rate for the ensuing calendar year shall be determined from the employer's negative reserve ratio in accordance with the table provided in this paragraph, subject to the rate adjustment provided in paragraph 3, except that the rate is subject to increases but not to reduction. An employer's negative reserve

ratio is the percentage resulting from dividing the employer's reserve deficit, which is the excess of benefits charged over contributions paid, by the employer's average annual taxable payroll. The table applicable to rate computation for calendar year 1987 and each calendar year thereafter is:

<u>Negative Reserve Ratio</u>	<u>Contribution Rate</u>
Less than 3%	2.85%
At least 3% but less than 4%	3.05%
At least 4% but less than 5%	3.30%
At least 5% but less than 6%	3.55%
At least 6% but less than 7%	3.80%
At least 7% but less than 8%	4.05%
At least 8% but less than 9%	4.30%
At least 9% but less than 10%	4.55%
At least 10% but less than 11%	4.80%
At least 11% but less than 12%	5.05%
At least 12% but less than 13%	5.30%
13% or more	5.40%

3. The ratio of the total assets of the fund on July 31 as defined by department regulation to the total taxable payrolls for the twelve month period immediately preceding the computation date shall determine the required income rate for the ensuing calendar year in accordance with the following fund control schedule:

<u>Fund Ratio</u>	<u>Required Income Rate</u>
12.0% or more	0.40%
At least 10.0% but less than 12.0%	0.50%
At least 9.5% but less than 10.0%	0.60%
At least 9.0% but less than 9.5%	0.70%
At least 8.5% but less than 9.0%	0.80%
At least 8.0% but less than 8.5%	0.90%
At least 7.5% but less than 8.0%	1.00%
At least 7.0% but less than 7.5%	1.10%
At least 6.5% but less than 7.0%	1.20%
At least 6.0% but less than 6.5%	1.30%
At least 5.5% but less than 6.0%	1.40%
At least 5.0% but less than 5.5%	1.50%
At least 4.5% but less than 5.0%	1.70%
At least 4.0% but less than 4.5%	1.80%
At least 3.5% but less than 4.0%	2.00%
At least 3.0% but less than 3.5%	2.20%
Less than 3.0%	2.40%

For each calendar year the department shall compute the estimated required tax yield from employers that is the product of the total taxable payrolls for the twelve month period immediately preceding the computation date and the applicable required income rate from the fund control schedule less the interest earned on monies in the fund during the twelve month period

1 immediately preceding the computation date and credited to the fund by the
2 United States treasury on or before October 31 following the computation
3 date. Except as otherwise provided by statute, the rates in paragraphs 1
4 and 2 shall be adjusted proportionately if the estimated required tax yield
5 from employers exceeds or is less than the estimated yield from the rates
6 without adjustment.

7 4. In computing an employer's adjusted rate as provided by
8 paragraph 3, the adjusted rate shall be calculated to the nearest
9 one-hundredth per cent ~~unless the employer has a positive reserve ratio of~~
10 ~~thirteen per cent or more. If the employer has a positive reserve ratio of~~
11 ~~thirteen per cent or more, the employer's adjusted rate shall be calculated~~
12 ~~to the nearest one-thousandth per cent.~~ An employer's adjusted rate shall
13 not be less than ~~twenty-five thousandths~~ TWO ONE HUNDREDTHS per cent.

14 Sec. 2. Section 23-731, Arizona Revised Statutes, is amended to read:

15 23-731. Classification of employers by benefit experience to
16 determine contribution rates; rate when report
17 unavailable

18 The commission, for each calendar year, shall classify employers in
19 accordance with their actual experience in the payment of contributions and
20 with respect to benefits charged against their accounts, with a view to
21 fixing such contribution rates as will reflect the benefit experience. Each
22 employer's rate for a calendar year shall be determined on the basis of the
23 employer's record as of July 1 of the preceding calendar year. If as of the
24 date the classification of employers is made the commission finds an
25 employing unit has failed to file any report required in connection therewith
26 or has filed a report which the commission finds incorrect or insufficient,
27 the commission shall make an estimate of the information required from the
28 employing unit on the basis of the best evidence reasonably available to it
29 at the time and shall notify the employing unit by ~~registered~~ mail addressed
30 to its last known address. Unless the employing unit files the report or a
31 corrected or sufficient report as the case may be within fifteen days after
32 mailing the notice, the commission shall compute such employing unit's rate
33 of contributions on the basis of such estimates, and the rate as so
34 determined shall be subject to increase but not to reduction on the basis of
35 subsequently ascertained information.

36 Sec. 3. Title 23, chapter 4, article 5, Arizona Revised Statutes, is
37 amended by adding section 23-733.01, to read:

38 23-733.01. Assignments of rates; transfers of experience;
39 definitions

40 A. IF AN EMPLOYER TRANSFERS THE EMPLOYER'S TRADE OR BUSINESS OR A
41 PORTION OF THE TRADE OR BUSINESS TO ANOTHER EMPLOYER AND AT THE TIME OF THE
42 TRANSFER THERE IS SUBSTANTIALLY COMMON OWNERSHIP, MANAGEMENT OR CONTROL
43 BETWEEN THE TWO EMPLOYERS, THE UNEMPLOYMENT EXPERIENCE THAT IS ATTRIBUTABLE
44 TO THE INITIAL EMPLOYER SHALL BE TRANSFERRED TO THE SUCCESSOR EMPLOYER. THE
45 RATE OF BOTH EMPLOYERS SHALL BE RECALCULATED AND MADE EFFECTIVE TO THE

1 BEGINNING OF THE CALENDAR YEAR THAT FOLLOWS THE DATE OF THE TRANSFER OF TRADE
2 OR BUSINESS.

3 B. IF A PERSON IS NOT AN EMPLOYER THAT IS SUBJECT TO THIS CHAPTER WHEN
4 THE EMPLOYER ACQUIRES A TRADE OR BUSINESS OF AN EMPLOYING UNIT, THE
5 UNEMPLOYMENT EXPERIENCE OF THE ACQUIRED BUSINESS SHALL NOT BE TRANSFERRED TO
6 THE SUCCESSOR EMPLOYER IF THE DEPARTMENT DETERMINES THAT THE SUCCESSOR
7 EMPLOYER ACQUIRED THE TRADE OR BUSINESS FOR THE PURPOSE OF OBTAINING A LOWER
8 RATE OF CONTRIBUTIONS. INSTEAD, THE DEPARTMENT SHALL ASSIGN THE STANDARD
9 CONTRIBUTION RATE UNDER SECTION 23-729 TO THE SUCCESSOR EMPLOYER. WHEN
10 MAKING A DETERMINATION UNDER THIS SECTION, THE DEPARTMENT SHALL CONSIDER THE
11 COST OF ACQUIRING THE BUSINESS, WHETHER THE PERSON CONTINUES THE BUSINESS
12 ENTERPRISE OF THE ACQUIRED BUSINESS, THE LENGTH OF TIME THAT THE ENTERPRISE
13 IS CONTINUED AND WHETHER A SUBSTANTIAL NUMBER OF NEW EMPLOYEES WERE HIRED TO
14 PERFORM DUTIES THAT WERE UNRELATED TO THE BUSINESS ACTIVITY BEFORE THE
15 ACQUISITION.

16 C. IF AN EMPLOYER OR A PERSON KNOWINGLY VIOLATES OR ATTEMPTS TO
17 VIOLATE THIS SECTION FOR THE PURPOSE OF OBTAINING A LOWER RATE OF
18 CONTRIBUTION OR IF A PERSON KNOWINGLY ADVISES AN EMPLOYER OR A PERSON ON
19 EVADING OR DEFEATING A CONTRIBUTION OR ITS PAYMENT, THE PERSON OR EMPLOYER
20 SHALL BE SUBJECT TO THE FOLLOWING PENALTIES:

21 1. IF THE PERSON IS AN EMPLOYER, THE PERSON SHALL BE ASSIGNED THE
22 HIGHEST RATE ASSIGNABLE UNDER THIS CHAPTER FOR THE RATE YEAR IN WHICH THE
23 TRANSFER OR THE ATTEMPTED TRANSFER OCCURRED AND FOR THE FOLLOWING THREE RATE
24 YEARS. IF THE PERSON'S BUSINESS IS ALREADY AT THE HIGHEST RATE FOR ANY YEAR,
25 OR IF THE AMOUNT OF INCREASE IN RATE WOULD BE LESS THAN TWO PER CENT FOR ANY
26 YEAR, THE CONTRIBUTION PENALTY RATE OF TWO PER CENT OF TAXABLE WAGES SHALL BE
27 IMPOSED FOR ANY SUCH YEAR.

28 2. IF THE PERSON IS NOT AN EMPLOYER, THE DEPARTMENT SHALL ASSESS
29 AGAINST THE PERSON A CIVIL PENALTY OF FIVE THOUSAND DOLLARS. THE DEPARTMENT
30 SHALL DEPOSIT PENALTIES COLLECTED PURSUANT TO THIS PARAGRAPH IN THE PENALTY
31 AND INTEREST ACCOUNT PURSUANT TO SECTION 23-705.

32 3. ANY PERSON OR EMPLOYER IN VIOLATION OF THIS SECTION MAY ALSO BE
33 PROSECUTED PURSUANT TO SECTION 13-2310 OR 13-2311. THIS DOES NOT PRECLUDE
34 PROSECUTION PURSUANT TO SECTION 23-786.

35 D. NOTWITHSTANDING ANY OTHER LAW, THIS SECTION APPLIES TO THE
36 ASSIGNMENTS OF RATES AND TRANSFERS OF EXPERIENCE UNDER THIS CHAPTER.

37 E. THIS DEPARTMENT SHALL APPLY THIS SECTION IN ORDER TO MEET THE
38 MINIMUM REQUIREMENTS OF ANY GUIDANCE OR REGULATION THAT IS ISSUED BY THE
39 UNITED STATES DEPARTMENT OF LABOR.

40 F. THE DEPARTMENT SHALL ADOPT RULES TO IDENTIFY THE TRANSFER OR
41 ACQUISITION OF A BUSINESS UNDER THIS SECTION.

42 G. FOR THE PURPOSES OF THIS SECTION:

43 1. "KNOWINGLY" MEANS HAVING ACTUAL KNOWLEDGE OF OR ACTING WITH
44 DELIBERATE IGNORANCE OR RECKLESS DISREGARD OF A REQUIREMENT.

- 1 2. "PERSON" MEANS PERSON AS DEFINED IN SECTION 7701(a)(1) OF THE
- 2 INTERNAL REVENUE CODE.
- 3 3. "TRADE OR BUSINESS" INCLUDES AN EMPLOYER'S WORKFORCE.
- 4 4. "VIOLATES" OR "ATTEMPTS TO VIOLATE" INCLUDES AN ACTION TO EVADE,
- 5 CONCEAL, MISREPRESENT OR ENGAGE IN WILLFUL NONDISCLOSURE.

APPROVED BY THE GOVERNOR APRIL 22, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 2005.

Passed the House March 14, 2005,


Passed the Senate April 18, 2005,


by the following vote: 55 Ayes,

by the following vote: 26 Ayes,


3 Nays, 2 Not Voting

3 Nays, 1 Not Voting


Speaker of the House


President of the Senate


Chief Clerk of the House

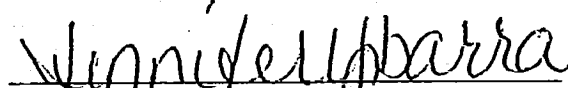

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

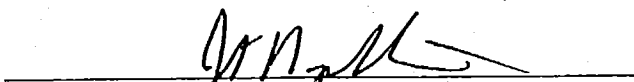
at 8:45 o'clock a. M.


Secretary to the Governor

Approved this 22 day of

April, 2005,

at 2:00 o'clock P. M.

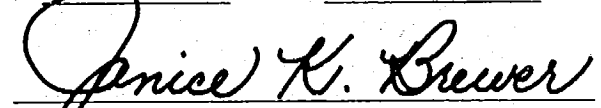

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of April, 2005,

at 3:53 o'clock P. M.


Secretary of State